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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE GOOGLE PLAY CONSUMER
ANTITRUST LITIGATION

Case No. 3:20-cv-05761-JD

**RESPONSE MEMORANDUM IN
SUPPORT OF MOTION TO APPOINT
COTCHETT, PITRE & MCCARTHY,
LLP AND KAPLAN FOX &
KILSHEIMER LLP AS INTERIM CO-
LEAD COUNSEL AND FOR
APPOINTMENT OF A STEERING
COMMITTEE**

Hearing Date: December 15, 2020
Time: 11:00 a.m. (Pacific)
Location: Via Zoom

RESPONSE TO MOTION TO APPOINT COTCHETT, PITRE & MCCARTHY, LLP AND KAPLAN FOX &
KILSHEIMER LLP AS INTERIM CO-LEAD COUNSEL AND FOR APPOINTMENT OF A STEERING
COMMITTEE

Bottini & Bottini, Inc. (“Bottini”), counsel for Plaintiff Amos Kober in *Kober v. Google LLC, et al.*, No. 4:20-cv-08336-BLF (filed Nov. 25, 2020) (“*Kober Action*”), respectfully submits this brief in support of the appointment of leadership in the above-titled matter. For the reasons stated herein, Plaintiff supports the application of the law firms of Cotchett Pitre & McCarthy, LLP (“Cotchett Pitre”) and Kaplan Fox & Kilsheimer LLP (“Kaplan Fox”) as Interim Co-Lead Counsel and for appointment of a Steering Committee (ECF No. 87) and requests the appointment of Albert Y. Chang to the Steering Committee. A copy of Bottini & Bottini, Inc.’s firm resume is attached hereto as **Exhibit 1**.

I. PROCEDURAL HISTORY

Plaintiff initially filed a complaint against Defendants Google LLC and Alphabet, Inc. in the Superior Court of California, County of Santa Clara. *See Class Action Compl., Kober v. Google LLC, et al.*, 5:20-cv-08336 (Santa Clara Cnty. Super. Ct. Nov. 25, 2020), ECF No. 1-1. Defendants then filed a notice of removal of the action from the Superior Court of the State of California, County of Santa Clara to the United States District Court for the Northern District of California. *See Notice of Removal from Santa Clara County Superior Court*, No. 5:20-cv-08336 (Nov. 25, 2020), ECF No. 1. Plaintiff’s action was next assigned to Magistrate Judge Donna Ryu on December 4, 2020 (ECF No. 4). After Defendants declined to proceed before a magistrate judge on December 8, 2020 (ECF No. 8), Plaintiff’s action was then assigned to Judge Beth Labson Freeman. On December 10, 2020, Plaintiff filed an administrative motion to relate the *Kober Action* to *In re Google Play Consumer Antitrust Litigation*, No. 3:20-cv-05761-JD (N.D. Cal.) (“*Google Play Case*”), which is pending before this Court.

II. ARGUMENT

Plaintiff believes that, under the facts of this case, the best interests of class members would be served by the appointment of Kaplan Fox and Cotchett Pitre.

The experience, professionalism, and inclusive approach of Cotchett Pitre and Kaplan Fox are well known to those of us who have practiced in this field for decades. Bottini has personally

1 worked with Nanci Nishimura, Elizabeth Castillo, Noorjahan Rahman, Adam Zapala, Mark
5 Molumphy, Robert Kaplan, Frederic Fox, and Laurence King on numerous large, high-stakes cases
6 and have nothing but the utmost respect for these outstanding attorneys.

7 In high-stakes, contentious litigation such as the present antitrust class action, it is
8 imperative that lead counsel appointed by the Court have the respect and support of other counsel.
9 While careful to avoid duplication of efforts and expense, Kaplan Fox and Cotchett Pitre are fair
: and draw upon, as necessary, the skills and expertise of other counsel to ensure the best and most
; efficient result in the case. This approach is in the best interests of the class members. It is also
< significant that Kaplan Fox and Cotchett Pitre have experience litigating antitrust actions in the
43 technology industry, which makes them particularly well-situated to serve in a leadership capacity
44 here.

45 In short, having personally worked closely for many years with Kaplan Fox and Cotchett
46 Pitre, Bottini unconditionally recommends and supports the appointment of these firms as Interim
47 Co-Lead Counsel in this case. These two firms meet all of the Rule 23(g) factors necessary to serve
48 as interim class counsel.

49 In addition to its significant antitrust experience, including *In re DRAM Antitrust Litigation*,
4: Bottini & Bottini has served or is currently serving in leadership positions in the following cases
4; pending in the San Francisco Bay Area: *In re Zoom Video Commc'ns, Inc. Privacy Litig.*, Master
4< File No. 20-CV-02155 (N.D. Cal.) (Koh, J.) (June 30, 2020 Order Appointing Bottini & Bottini to
53 Steering Committee); *In re Yahoo! Inc. Shareholder Litig.*, Lead Case No. 17-CV-307054 (Superior
54 Court for the State of California, County of Santa Clara) (Bottini & Bottini was Co-Lead Counsel
55 in shareholder action involving the largest corporate data breach in U.S. history; case settled for
56 \$29 million in 2019); *In re Alphabet Inc. Shareholder Derivative Litig.*, Lead Case No.:
57 19CV341522 (Santa Clara Superior Court) (Bottini & Bottini is Co-Lead Counsel; case settled in
58 2020 with Google agreeing to establish a Diversity, Equity & Inclusion Council and spend \$310
59 million over ten years on workplace initiatives designed to improve diversity and inclusion issues);

1 *In re Snap, Inc. Securities Cases*, JCCP No. 4960 (Superior Court for the State of California, County
 5 of Los Angeles) (Bottini & Bottini is serving as co-lead counsel; case settled in 2020 for
 6 \$32,812,500); *In re Facebook, Inc. Shareholder Derivative Privacy Litig.*, No. 4:18-CV-01792-
 7 HSG (N.D. Cal.) (Bottini & Bottini is serving as a member of Plaintiffs' Executive Committee); *In*
 8 *re Eventbrite, Inc. Securities Litig.*, Lead Case No. 19CIV02798 (Superior Court for the State of
 9 California, County of San Mateo) (by Order dated June 25, 2019, Judge Weiner appointed Bottini
 : & Bottini and Cotchett Pitre Lead Counsel); *Wolther v. Maheshwari et al. (In re Veeco Instruments*
 ; *Shareholder Litig.)*, Lead Case No. 18CV329690 (Superior Court for the State of California,
 < County of Santa Clara) (Bottini & Bottini was appointed as Lead Counsel by Judge Brian Walsh).
 43 The firm's attorneys have a proven record of success in leadership roles. Bottini & Bottini has the
 44 experience and resources needed to support class counsel with the successful prosecution of this
 45 important case moving forward and is committed to doing so.

46 Moreover, Bottini & Bottini has made a major commitment and contribution to cases
 47 designed to increase diversity, equity, and inclusion at corporations. The groundbreaking
 48 settlement reached in *In re Alphabet Inc. Shareholder Derivative Litig.*, Lead Case No.:
 49 19CV341522 (Santa Clara Superior Court), where Bottini & Bottini, Inc. is Co-Lead Counsel,
 4 : resulted in Google's commitment to eliminate the use of mandatory arbitration in cases alleging
 4 ; sexual harassment and discrimination, the establishment of a Diversity, Equity, & Inclusion Council
 4 < including two members selected by Plaintiffs' counsel, and an agreement by Google to spend \$310
 53 million over ten years on workplace initiatives designed to eliminate sexual harassment and
 54 discrimination and initiatives that support diversity, equity, and inclusion. See "Alphabet Settles
 55 Shareholder Suits Over Sexual Harassment Claims," THE NEW YORK TIMES, Sept. 25, 2020.¹ The
 56 membership of the DEI Council will consist of both external experts and internal members,
 57 including, in its first year, Alphabet's CEO (Sundar Pichai). The workplace initiatives and
 58 programs will focus on (1) expanding the pool of historically underrepresented technologists;

5 : ¹ Available at <https://www.nytimes.com/2020/09/25/technology/google-sexual-harassment-lawsuit-settlement.html>.
 5 ; RESPONSE TO MOTION TO APPOINT COTCHETT, PITRE & McCARTHY, LLP AND KAPLAN FOX 3
 & KILSHEIMER LLP AS INTERIM CO-LEAD COUNSEL AND FOR APPOINTMENT OF A STEERING
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(2) hiring, progression, and retention of historically underrepresented talent at Alphabet and, in particular, Google; (3) fostering respectful, equitable, and inclusive workplace cultures; and (4) helping historically underrepresented groups and individuals succeed with their businesses and in the digital economy and tech industry.

This summer, Bottini & Bottini also filed several cases against Facebook, Oracle, Gap, Qualcomm, Monster Beverage Corp., and NortonLifeLock seeking corporate governance reforms to increase diversity on the companies' boards of directors and in the workforce. *See, e.g., In re Oracle Corp. Shareholder Derivative Litig.*, Lead Case No. 3:20-CV-04439-JSC (N.D. Cal.) (Bottini & Bottini appointed Co-Lead Counsel by Judge Corley); *Ocegueda v. Zuckerberg*, Case No. 3:20-cv-04444-LB (N.D. Cal.).

III. CONCLUSION

For the reasons stated herein, Plaintiff Kober supports the appointment of the Kaplan Fox and Cotchett Pitre firms as Interim Co-Lead Class Counsel, along with their proposed Steering Committee, to which Committee Plaintiff Kober respectfully requests that Albert Y. Chang of Bottini & Bottini be added as a member.

Dated: December 10, 2020

Respectfully Submitted,

s/ Albert Y. Chang

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